

THINKING ABOUT THE STATE'S ROLE IN DEVELOPMENT OF THE NEXT 5-YEAR OCS OIL AND GAS EXPLORATION PLAN

WHAT DO WE KNOW?

- The US Secretary of Interior has a responsibility under the Outer Continental Shelf Lands Act to develop a 5-year Plan that meets the national interest.
- Since there is no longer a moratorium on oil and gas exploration, any lease block in the Mid-Atlantic region (MD, NC, VA) could be included in the Plan.
- Under the Outer Continental Shelf Lands Act, the area offshore of NC can be included in the Plan without a request from the state and without the consent of the state.
- The Minerals Management Service (MMS) Draft Proposed Plan includes 3 proposed lease sites in the Mid-Atlantic Region (which includes NC), including the existing Virginia lease sale 220.
- The Draft Proposed Plan does not propose a 50-mile buffer for any site other than the Virginia lease sale. (In the Draft Proposed Plan, MMS specifically asks whether buffer zones should be considered for areas under consideration for inclusion in the final Five-year Program.)
- Current law does not provide for revenue sharing with any states other than the Gulf Coast states.
- The OCS Lands Act does not expressly recognize the possibility of a lease limited to natural gas
- MMS has estimated oil and gas resources potentially located in lease blocks off the NC coast, but specific information on availability of oil or gas within a lease area would not be developed until after a lease sale has actually been made.

WHAT IS NOT KNOWN?

- The location of any future lease sale off the NC coast.

- Size of oil or gas deposits at any specific location offshore of NC; detailed information on actual oil and gas deposits will not be available until after the Proposed Lease Plan has been finalized, a Proposed Lease Sale has been approved and permits for exploration have been issued.
- The likelihood that Congress will expand revenue sharing to include additional states.
- Where product would be brought on-shore and the nature/location of on-shore facilities needed to receive the product

HOW CAN THE STATE PARTICIPATE IN DEVELOPMENT OF THE 5-YEAR PLAN?

- State recommendations and comments are requested with respect to the Draft Proposed Plan and the Proposed Lease Plan. In the Draft Proposed Plan (DPP), MMS specifically asks whether there are areas that should be excluded because they are particularly sensitive or because oil and gas activities may significantly conflict with other uses for which the area might be better suited.
- The State has no power to exclude itself from a proposed or final lease plan.
- Opportunities for the State to influence a Proposed Lease Plan:
 1. Comment on the Draft and Final Environmental Impact Statement (EIS). MMS will prepare an EIS on the Proposed Lease Plan. NC and other interested parties will have a chance to review and comment on the EIS. Comments on the EIS must relate to the document itself (i.e., Does the EIS appropriately describe the purpose of the oil and gas lease program? Does it identify all of the feasible alternatives for oil and gas exploration? Does it fully describe the impacts of each alternative?) The EIS comment process is not intended to be a debate on the merits of oil and gas leasing.
 2. State Consistency Review.

Consistency Requirement: Federal activities that affect the coastal resources of a state must be consistent "to the maximum extent practicable" with that state's federally approved coastal management program. (In NC, the coastal program incorporates the local land use plans for the twenty coastal counties and incorporated towns within those counties.)

MMS will review the state's coastal management program and make its own determination about the consistency of the Proposed Lease Plan with NC

policies. The state then has the opportunity to agree or disagree with the MMS consistency determination.

A state consistency objection must be based on: 1. Some impact on state coastal resources; and 2. Conflict with a mandatory, enforceable policy in the state's federally approved coastal management program or lack of sufficient information to make a consistency decision.

STATE INFLUENCE ON ACTIVITIES THAT FOLLOW PLAN APPROVAL

Later steps in OCS oil and gas exploration, such as the actual lease sale and approval of a specific plan of exploration, will also require an EIS and a consistency determination. Comments on the EIS would in each case be focused on the adequacy of the environmental document and not on the merits of the decision that is being made.

A consistency objection would require the state to show that the proposed action (such as lease sale) would have an impact on the state's coastal resources and be inconsistent with a specific enforceable policy in the state's coastal management program.

Since OCS oil and gas exploration is most likely to occur outside the state's jurisdictional waters, there may be little direct state regulatory authority. Activities most likely to trigger state permits would be onshore support and production activities.